

**ASSEMBLY BILL**

**No. 2672**

**Introduced by Assembly Member Leonard**

February 22, 2002

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An act to amend Section 11166 of the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2672, as introduced, Leonard. Child abuse reporting.

Existing law establishes the Child Abuse and Neglect Reporting Act, which requires that specified persons who have knowledge of or observe a child in their professional capacity or within the scope of their employment, who the person knows or reasonably suspects has been the victim of child abuse or neglect to report that information to a child protective agency, as defined. Existing law prohibits any supervisor or administrator from impeding or inhibiting these reporting duties, and prohibits any person from being sanctioned for making the report.

This bill would make a violation of the above prohibition a misdemeanor punishable by confinement in a county jail for a term not to exceed six months, or by a fine not to exceed \$1,000, or by both that fine and imprisonment. Because this bill creates a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11166 of the Penal Code is amended to  
2 read:

3 11166. (a) Except as provided in subdivision (c), a mandated  
4 reporter shall make a report to an agency specified in Section  
5 11165.9 whenever the mandated reporter, in his or her professional  
6 capacity or within the scope of his or her employment, has  
7 knowledge of or observes a child whom the mandated reporter  
8 knows or reasonably suspects has been the victim of child abuse  
9 or neglect. The mandated reporter shall make a report to the  
10 agency immediately or as soon as is practicably possible by  
11 telephone, and the mandated reporter shall prepare and send a  
12 written report thereof within 36 hours of receiving the information  
13 concerning the incident.

14 (1) For the purposes of this article, “reasonable suspicion”  
15 means that it is objectively reasonable for a person to entertain a  
16 suspicion, based upon facts that could cause a reasonable person  
17 in a like position, drawing, when appropriate, on his or her training  
18 and experience, to suspect child abuse or neglect. For the purpose  
19 of this article, the pregnancy of a minor does not, in and of itself,  
20 constitute a basis for a reasonable suspicion of sexual abuse.

21 (2) The agency shall be notified and a report shall be prepared  
22 and sent even if the child has expired, regardless of whether or not  
23 the possible abuse was a factor contributing to the death, and even  
24 if suspected child abuse was discovered during an autopsy.

25 (3) A report made by a mandated reporter pursuant to this  
26 section shall be known as a mandated report.

27 (b) Any mandated reporter who fails to report an incident of  
28 known or reasonably suspected child abuse or neglect as required  
29 by this section is guilty of a misdemeanor punishable by up to six  
30 months confinement in a county jail or by a fine of one thousand  
31 dollars (\$1,000) or by both that fine and punishment.

32 (c) (1) A clergy member who acquires knowledge or a  
33 reasonable suspicion of child abuse or neglect during a penitential  
34 communication is not subject to subdivision (a). For the purposes  
35 of this subdivision, “penitential communication” means a



1 communication, intended to be in confidence, including, but not  
2 limited to, a sacramental confession, made to a clergy member  
3 who, in the course of the discipline or practice of his or her church,  
4 denomination, or organization, is authorized or accustomed to  
5 hear those communications, and under the discipline, tenets,  
6 customs, or practices of his or her church, denomination, or  
7 organization, has a duty to keep those communications secret.

8 (2) Nothing in this subdivision shall be construed to modify or  
9 limit a clergy member's duty to report known or suspected child  
10 abuse or neglect when the clergy member is acting in some other  
11 capacity that would otherwise make the clergy member a  
12 mandated reporter.

13 (d) Any commercial film and photographic print processor  
14 who has knowledge of or observes, within the scope of his or her  
15 professional capacity or employment, any film, photograph,  
16 videotape, negative, or slide depicting a child under the age of 16  
17 years engaged in an act of sexual conduct, shall report the instance  
18 of suspected child abuse to the law enforcement agency having  
19 jurisdiction over the case immediately, or as soon as practically  
20 possible, by telephone, and shall prepare and send a written report  
21 of it with a copy of the film, photograph, videotape, negative, or  
22 slide attached within 36 hours of receiving the information  
23 concerning the incident. As used in this subdivision, "sexual  
24 conduct" means any of the following:

25 (1) Sexual intercourse, including genital-genital, oral-genital,  
26 anal-genital, or oral-anal, whether between persons of the same or  
27 opposite sex or between humans and animals.

28 (2) Penetration of the vagina or rectum by any object.

29 (3) Masturbation for the purpose of sexual stimulation of the  
30 viewer.

31 (4) Sadomasochistic abuse for the purpose of sexual  
32 stimulation of the viewer.

33 (5) Exhibition of the genitals, pubic, or rectal areas of any  
34 person for the purpose of sexual stimulation of the viewer.

35 (e) Any other person who has knowledge of or observes a child  
36 whom he or she knows or reasonably suspects has been a victim  
37 of child abuse or neglect may report the known or suspected  
38 instance of child abuse or neglect to an agency specified in Section  
39 11165.9.

(f) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(g) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article. *Any supervisor or administrator who violates this paragraph shall be guilty of a misdemeanor punishable by confinement in a county jail for a term not to exceed six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment.*

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(h) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county

1 probation or welfare department also shall send, fax, or  
2 electronically transmit a written report thereof within 36 hours of  
3 receiving the information concerning the incident to any agency  
4 to which it makes a telephone report under this subdivision.

5 (i) A law enforcement agency shall immediately, or as soon as  
6 practically possible, report by telephone to the agency given  
7 responsibility for investigation of cases under Section 300 of the  
8 Welfare and Institutions Code and to the district attorney's office  
9 every known or suspected instance of child abuse or neglect  
10 reported to it, except acts or omissions coming within subdivision

11 (b) of Section 11165.2, which shall be reported only to the county  
12 welfare or probation department. A law enforcement agency shall  
13 report to the county welfare or probation department every known  
14 or suspected instance of child abuse or neglect reported to it which  
15 is alleged to have occurred as a result of the action of a person  
16 responsible for the child's welfare, or as the result of the failure of  
17 a person responsible for the child's welfare to adequately protect  
18 the minor from abuse when the person responsible for the child's  
19 welfare knew or reasonably should have known that the minor was  
20 in danger of abuse. A law enforcement agency also shall send, fax,  
21 or electronically transmit a written report thereof within 36 hours  
22 of receiving the information concerning the incident to any agency  
23 to which it makes a telephone report under this subdivision.

24 SEC. 2. No reimbursement is required by this act pursuant to  
25 Section 6 of Article XIII B of the California Constitution because  
26 the only costs that may be incurred by a local agency or school  
27 district will be incurred because this act creates a new crime or  
28 infraction, eliminates a crime or infraction, or changes the penalty  
29 for a crime or infraction, within the meaning of Section 17556 of  
30 the Government Code, or changes the definition of a crime within  
31 the meaning of Section 6 of Article XIII B of the California  
32 Constitution.

